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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
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13 Plaintiff,
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15 v.
16 OBDULIO JIMÉNEZ,
DANIEL JOE BOBIAN,
JOSE MANUEL AGUILERA BARBOSA,
17 Defendants.
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CASE NO. 2:20-CR-35-JAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: April 14, 2020
TIME: 9:15 a.m.
COURT: Hon. John A. Mendez

19 This case was set for a status conference on April 14, 2020, and moved to June 23, 2020, on the
20 Court's own motion, citing General Orders 611 and 612. To the extent it is needed, this stipulation
21 supplements the basis for exclusion of time and requests the Court to exclude time under Local Code T4
as well, for the reasons set forth below.

22 On March 18, 2020, this Court issued General Order 612, with reference to General Order 611,
23 which together permit District Judges to continue all matters scheduled to occur before May 1, 2020,
24 until a date after that, and to exclude time under the Speedy Trial Act. These General Orders were
25 entered to address public health concerns related to COVID-19.

26 Although the General Orders address the district-wide health concern, the Supreme Court has
27 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
28 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.

1 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 2 exclusion under” § 3161(h)(7)(A). *Id.* at 507. And moreover, any such failure cannot be harmless. *Id.*
 3 at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 4 judge ordering and ends-of-justice continuance must set forth explicit findings on the record “either
 5 orally or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 7 and inexcusable—the General Order requires specific supplementation. Ends-of-justice continuances
 8 are excludable only if “the judge granted such continuance on the basis of his findings that the ends of
 9 justice served by taking such action outweigh the best interest of the public and the defendant in a
 10 speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets
 11 forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice
 12 served by the granting of such continuance outweigh the best interests of the public and the defendant in
 13 a speedy trial.” *Id.*

14 The General Order excludes delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 15 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 16 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 17 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 18 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 19 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 20 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 21 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 22 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

23 In light of the societal context created by the foregoing, this Court should consider the following
 24 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 25 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date
 26 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
 27 pretrial continuance must be “specifically limited in time”).

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STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants Obdulio JIMÉNEZ and Daniel Joe BOBIAN, by and through their counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status on April 14, 2020, and then continued to June 23, 2020, at 9:15 a.m., on the Court's own motion.

2. By this stipulation, the defendants now move to exclude time between April 14, 2020, and June 23, 2020, under Local Code T4, in addition to the exclusion of time the Court has already ordered in light of public health concerns cited by General Order 611. Defendant Jose Manuel Aguilera BARBOSA has not yet appeared in this matter, and therefore does not join in this stipulation.

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that it is in the process of producing discovery associated with this case, includes law enforcement reports, photographs, as well as investigative reports. All of this discovery will be either produced directly to counsel or made available for inspection and copying.

b) Counsel for defendants will need time to consult with their clients, review discovery, investigate evidence and potential defense strategies, and otherwise prepare for trial.

c) Counsel for the defendants believe that failure to grant the above-requested continuance would deny them the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendants in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of April 14, 2020 to June 23, 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: April 15, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ JAMES R. CONOLLY
JAMES R. CONOLLY
Assistant United States Attorney

Dated: April 15, 2020

/s/ JENNIFER MOUZIS
JENNIFER MOUZIS
Counsel for Defendant
DANIEL JOE BOBIAN

Dated: April 15, 2020

/s/ STEFAN E. SACKS
STEFAN E. SACKS
Counsel for Defendant
OBDULIO JIMÉNEZ

FINDINGS AND ORDER

IT IS SO FOUND AND ORDERED this 15th day of April, 2020

/s/ John A. Mendez

United States District Court Judge